

Internal Revenue Service, Treasury

§ 1.457-4

not a year ending before the year in which A attains normal retirement age.

[T.D. 7836, 47 FR 42338, Sept. 27, 1982]

§ 1.457-3 Tax treatment of participants where plan is not an eligible plan.

(a) *In general.* If a State (within the meaning of § 1.457-2(c)) provides for a deferral of compensation (after the effective date described in paragraph (c)) under any agreement or arrangement described in § 1.457-2(b) that is not an eligible plan within the meaning of § 1.457-2—

(1) Compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457(e)(3)) of the rights to such compensation,

(2) Earnings credited on the compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary only when paid or made available, provided that the interest of the participant or beneficiary in the assets (including amounts deferred under the plan) of the entity sponsoring the plan is not senior to the entity's general creditors, and

(3) Amounts paid or made available under the plan to a participant or beneficiary shall be taxable to the participant or beneficiary under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) does not apply with respect to—

(1) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) An annuity plan or contract described in section 403,

(3) A qualified bond purchase plan described in section 405(a),

(4) That portion of any plan which consists of a transfer of property described in section 83, and

(5) That portion of any plan which consists of a trust to which section 402(b) applies.

(c) *Effective date.* This section is effective for taxable years beginning after December 31, 1981. For rules applicable in taxable years beginning after

December 31, 1978, and before January 1, 1982, see § 1.457-4.

[T.D. 7836, 47 FR 42341, Sept. 27, 1982; 47 FR 46497, Oct. 19, 1982]

§ 1.457-4 Transitional rules.

(a) *In general.* Subject to the limitations described in paragraphs (b) and (c) of this section, amounts deferred (within the meaning of § 1.457-1(d)(3)) in taxable years beginning after December 31, 1978, and before January 1, 1982 under a plan described in § 1.457-2(b) (including an eligible plan within the meaning of § 1.457-2, but not including a plan described in section 457(e)(2) and § 1.457-3(b)) shall be includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary.

(b) *General limitation.* Except as described in paragraph (c) of this section, and excluding amounts deferred in taxable years beginning before January 1, 1979, compensation deferred under one or more plans described in paragraph (a) of this section is excludable from a participant's gross income under this section for a taxable year only to the extent it does not exceed the lesser of—

(1) \$7,500, or

(2) 33⅓% of the participant's includible compensation (within the meaning of § 1.457-2(e)(2)) for the taxable year, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State (within the meaning of § 1.457-2(c)). For purposes of this paragraph, compensation deferred under a plan shall be taken into account at its value in the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value in the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(c) *Limited catch-up.* This paragraph (c) applies if all plans described in paragraph (a) of this section in which an individual is a participant are eligible plans within the meaning of § 1.457-2, and the participant's taxable year is a taxable year described in section 457(b)(3) and § 1.457-2(f). In such a case,